

owned but not vertically integrated Signatory, will be far more severe than any harm to other Signatories in countries that have adopted direct access.

A. Implementation of the *Order* Will Cause Irreparable Harm by Depriving COMSAT of Customers and Revenue for Which There Is No Adequate Remedy at Law

By authorizing COMSAT's current customers to contract directly with INTELSAT to order, receive, and pay for INTELSAT space segment capacity on the same terms as COMSAT, the *Order* confronts COMSAT with "unrecoverable economic loss" which "qualif[ies] as irreparable harm." *Iowa Utilities Board v. FCC*, 109 F.3d 418, 426 (8th Cir. 1996), *motion to vacate stay denied*, 519 U.S. 978 (1996). This loss will be sustained both in terms of a reduction in the number of COMSAT customers and a reduction in the revenue COMSAT will be able to generate from those customers it is able to retain.

COMSAT clearly will lose customers upon implementation of direct access—indeed, that is the *Order's* entire purpose. The *Order* purports to show that users of INTELSAT capacity would be better off "directly accessing INTELSAT rather than going solely through a Signatory." *Order*, ¶ 20. It is beyond dispute that authorizing COMSAT's customers to "directly access[] INTELSAT rather than going through" COMSAT will place future sales in immediate jeopardy.³³

As the Commission plainly states, COMSAT's customers will be authorized to "enter into a contractual agreement with INTELSAT for the purpose of ordering, receiving, and

³³ Renegotiation of existing traffic agreements could mitigate this risk for certain customers. However, any such renegotiation would be attributable to the Commission's *Order*, and the resulting loss of revenue would constitute unrecoverable economic injury under applicable case law. *See, e.g., Iowa Utils. Bd.*, 109 F.3d at 426.

paying for INTELSAT space segment capacity at [essentially] the same rate that INTELSAT charges [COMSAT]. . . .” *Order*, ¶ 2. The *Order* permits COMSAT to collect just 5.58% above the IUC,³⁴ a surcharge intended to compensate COMSAT only for the “direct costs undertaken in performing its [statutorily required] Signatory functions on behalf of the U.S. government,” *Order*, ¶ 52. Thus, for every customer that opts for direct access, COMSAT will lose the difference between the IUC-plus-surcharge level and its market-based rates—the latter of which now permit COMSAT to recover its remaining costs (such as marketing, sales, engineering, and taxes) and earn a reasonable return on its investment.

It is illogical to think that customers would not inevitably leap at the opportunity to obtain capacity at prices that are, by definition, set below the market rates currently charged. Consequently, under the system established in the *Order*, COMSAT can attract no new business—in the form of either new customers for INTELSAT-based capacity or current customers seeking additional INTELSAT capacity—unless COMSAT provides that capacity at or below a price that equals the IUC plus the surcharge. Any price above that level will simply drive U.S. customers to INTELSAT, *even though COMSAT’s current prices are, by express FCC determination, already set at a competitive, market-driven level.*³⁵

³⁴ While the *Order* states that COMSAT may file a tariff for a surcharge higher than 5.58%, the Commission has made clear that only limited categories of costs may be recovered and that, even with respect to these categories, COMSAT will be subject to administrative litigation. The operating principle is that the surcharge deprives COMSAT of the opportunity to recover all of its costs, along with any margin.

³⁵ See *COMSAT Non-Dominance Order*, 13 FCC Rcd at 14118, 14131, 14132, 14135, 14140 (concluding that COMSAT lacks any “ability to raise or maintain prices above costs, control prices,” or “exclude competition” in the markets for international switched voice, private line, full-time video, or transmit and receive occasional use video services on any major route).

As a result, COMSAT will lose the revenue differential between the IUC + surcharge level and the market-pegged rates COMSAT would have charged. Although it is difficult to quantify these future losses precisely, no party to the proceeding—nor the Commission itself—has disputed that they will amount to millions of dollars during the time that the anticipated court appeal would be pending. *See, e.g., Order*, ¶ 37, App. D; Ex Parte of Satellite Users Coalition, IB Docket No. 98-192, Attachment at 4 (filed Sept. 2, 1999) (claiming that direct access will create \$1 billion in so-called “savings” over 10 years).³⁶ *See also* Flower Affidavit, ¶ 10 (estimating that the lost revenue from disruption of business relations, lost customers, and impairment of goodwill amounting to millions of dollars between the *Order*’s effective date and end of court appeal.)³⁷

³⁶ As the Commission well knows, a court appeal of an FCC order can often be prolonged for years, particularly if the court holds a matter in abeyance pending agency action on any petition for reconsideration that might be filed. *See, e.g., DISCO-II Order*, 12 FCC Rcd 24094, *petitions for recon. pending, petition for review docketed sub nom., COMSAT v. FCC*, Docket No. 98-1011 (D.C. Cir. filed Jan. 12, 1998).

³⁷ Moreover, absent a stay, the *Order* sets in motion a process that will systematically remove COMSAT from the market as a provider of space segment capacity, rendering it a mere passive investor in the business. The removal of a business entity from an important line of business has routinely been treated as “irreparable harm” for the purposes of a stay. In *Holiday Tours, Inc.*, for example, the court preserved the *status quo* by staying an agency order that would have terminated a tour operator’s provision of bus tours while allowing the operator to continue providing limousine service. The court found that “[t]he harm to Holiday Tours in the absence of a stay would be its destruction in its current form as a provider of bus tours.” *Id.* at 843. Such harm, held the court, is not a “‘mere’ economic injur[y] . . . for which ‘adequate compensatory or other corrective relief will be available at a later date.’” *Id.* at 843 n.2 (quoting *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d at 925); *accord Holmes v. United States*, 815 F. Supp. 429, 431 (M.D. Ala. 1993) (finding “that the plaintiff [grocer] will suffer irreparable harm” if agency order removing grocery from food stamp program was not stayed, “[s]ince it is undisputed that that plaintiff derives 75 percent of his income from food stamps and that he will probably lose his business if he is disqualified from the program. . . .”), *stay dissolved on other grounds*, 868 F. Supp. 1348 (M.D. Ala. 1994), *aff’d*, 67 F.3d 314 (11th Cir. 1995), *cert. denied*, 517 U.S. 1188 (1996).

In addition to the monetary losses, there certainly can be no guarantee that any customer who seeks direct access to the INTELSAT system upon implementation of the *Order* would return its business to COMSAT following the reversal of the *Order*. The chaos following the *Order's* reversal would enhance the opportunities for COMSAT's many competitors to take away the company's current customers by capitalizing on regulatory uncertainty. "[W]hen the failure to grant preliminary relief creates the possibility of permanent loss of customers to a competitor or the loss of goodwill, the irreparable injury prong is satisfied." *Multi-Channel TV Cable Company v. Charlottesville Quality Cable Operating Company*, 22 F.3d 546, 552 (4th Cir. 1994); *see also Iowa Utilities Board*, 109 F.3d at 425-26 (noting that even if FCC pricing rules were eventually struck down, "it w[ould] be extremely difficult for the parties to abandon the influence of their previous agreements that were based on the ... pricing rules" and holding that this "potential loss of consumer goodwill qualifies as irreparable harm.").

Moreover, COMSAT will lack an adequate remedy—either under current marketplace realities or under the law—to recover revenues it will lose during the period of judicial appeal if a stay is not issued. As noted above, COMSAT cannot look to later above-market pricing for recovery; the Commission has recognized that the international facilities-based transmission marketplace is competitive and that COMSAT therefore lacks the ability to set prices any higher. *COMSAT Non-Dominance Order*, 13 FCC Rcd at 14095-96, 14118, 14131-40; *see also Iowa Utilities Board*, 109 F.3d at 426 (ordering stay where movants "would be unable to fully recover . . . losses [caused by implementation of an FCC rule subject to appeal] merely through their participation in the market").

Nor could COMSAT be made whole, absent a stay, through some variation on a legal damages remedy. *See Baker Electric Cooperative, Inc. v. Chaske*, 28 F.3d 1466, 1473 (8th Cir. 1994) (granting a stay where movant lacked an adequate remedy at law to recover potential economic harm and loss in productivity, even if ultimately prevailing on the merits). As a U.S. common carrier, COMSAT must charge only rates specified in tariffs or in inter-carrier contracts; indeed, the *Order* specifies that COMSAT must recover the 5.58% surcharge via imposition of a tariff. Yet, the “filed rate doctrine,” to which all common carriers are subject, prohibits COMSAT from retroactively modifying the terms or conditions of its published tariffs—even if it were to prevail on appeal. *See AT&T v. Central Office Telephone, Inc.*, 118 S. Ct. 1956, 1962-63 (1998) (citing *Louisville & Nashville R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915)) (filed rate doctrine dictates that “the rate of the carrier duly filed [with the FCC] is the only lawful charge. Deviation from it is not permitted upon any pretext.”).

Accordingly, unless the *Order* is stayed pending appeal, no “adequate compensatory or other corrective relief will be available at a later date.” *Cf. Holiday Tours, Inc.*, 559 F.2d at 843 n.2 (citations omitted). A stay is necessary to address the irreparable loss of customers and revenue that COMSAT will suffer as a result of the Commission’s action.

B. The Harm Imposed on COMSAT by Direct Access Is Not Comparable to the Experience of Foreign Signatories

Under the direct access scheme adopted in the *Order*, COMSAT’s return on its investment will be tied to the level of IUCs, which are set by INTELSAT. *Order*, ¶ 72. Control over COMSAT’s rates will thus be shifted to INTELSAT. This shift in control is likely to harm COMSAT far more severely than it has harmed Signatories in other countries where direct access has been adopted. Of INTELSAT’s 143 Signatories, COMSAT is the *only*

one whose primary business is leasing INTELSAT space segment. Other Signatories are vertically integrated companies that provide international telecommunications services directly to end users (*i.e.*, they are foreign counterparts to AT&T and MCI WorldCom). These Signatories use INTELSAT capacity primarily as a medium for their captive retail telephone businesses. Thus, they do not care whether the IUC level is sufficient in and of itself to compensate them for all their INTELSAT-related costs because they recover these costs through their retail international calling rates.

COMSAT, however, has no direct line into consumers' homes. It cannot sell international voice or data services directly to end users in the United States. Instead, COMSAT must earn most of its revenues by selling the INTELSAT space segment that it owns to the very carriers (such as AT&T) that are also its competitors (through the operation of high-capacity submarine cables). Thus, COMSAT, alone among INTELSAT's 143 Signatories, cannot rely on end-user pricing and internal accounting mechanisms to correct any shortfalls in the IUC.

Nor, contrary to the *Order's* conclusion, can COMSAT unilaterally affect the level of the IUCs. *See Order*, ¶ 84 ("If Comsat believes that an IUC rate is too low, then it may work within its capacity as a Board member of INTELSAT to address any concerns it has with the return on investment provided by IUC rates."). In fact, COMSAT has only 20% voting power within INTELSAT, and, as the Commission well knows, often fails to win majority support for U.S.-style market initiatives. Moreover, INTELSAT redetermines the return on Signatory capital annually. That return has been much lower in prior years and could be reduced again in future years. For these reasons, the *Order's* "assum[ption] that the

[INTELSAT] Board will establish IUC rates that reflect a market rate of return,” *Order*, ¶ 78, is unwarranted.

III. No Interested Party Would Suffer Substantial Harm if the Stay Were Granted.

Although implementation of the *Order* would cause severe harm to COMSAT, any benefits to third parties would be mitigated, diffused, and comparatively minor. Accordingly, any harm to third parties caused by a stay of the *Order* should, in the balancing of equities, be accorded little weight. Further, a stay of the *Order* would not harm the Commission. Instead, a stay would preserve the *status quo* of nearly four decades duration, and avoid the administrative chaos that might otherwise ensue were direct access to be implemented and then reversed. *See Holiday Tours, Inc.*, 559 F.2d at 843 (a stay maintaining the *status quo* should be granted where, as here, there is “little indication that a stay pending appeal will result in substantial harm to either appellee Commission or to [third parties]”).

A. A Stay Will Not Harm COMSAT’s Customers.

The majority of COMSAT’s business comes from customers—including AT&T, MCI WorldCom, and Sprint—that are considerably larger and more diversified than COMSAT. Further, these entities spend only a minute fraction of their revenues purchasing satellite space segment from COMSAT,³⁸ and the *Order* only affects a smaller fraction of even that minute

³⁸ In 1997, COMSAT’s total revenues from switched voice and private line services to and from the United States accounted for approximately \$180 million. *See Brattle Group Economic Assessment* at 26. In comparison, international telephony revenues of U.S. international retail carriers exceeded \$14 billion in 1997. *Id.* at 55-56. Thus, COMSAT’s total revenues represent only $(\$180 \text{ million} / \$14 \text{ billion}) = 1.286\%$ of the carriers’ international retail telephony revenues. *Id.* at 56 & n.114.

percentage (because direct access customers would still have to pay INTELSAT at the IUC). Thus, any savings or efficiencies that might accrue as a result of direct access would be both small and diffused among the large and diversified companies that are COMSAT's carrier-customers.

Moreover, any minor harm that might result from a grant of this stay request is considerably mitigated by the operation of the vibrant transoceanic telecommunications marketplace. Today, COMSAT faces significant facilities-based competition on every major route to or from the United States. *COMSAT Non-Dominance Order*, 13 FCC Rcd at 14095-96. Due to this competition, COMSAT now lacks any "ability to raise or maintain prices above costs, control prices, or exclude competition" in the markets for international switched voice, private line, full-time video, or transmit and receive occasional-use video services on any major route. *See id.* at 14118, 14131, 14132, 14135, 14140. Indeed, even on the so-called "thin routes," which no other carrier is yet willing to serve, COMSAT's space segment prices are tied to its competitive route prices, capped, and (for switched voice and data) must drop by 4% per annum. *See Policies and Rules for Alternative Incentive Based Regulation of Comsat Corp.*, 14 FCC Rcd at 3073 (1999).

Thus, because of the effect of competition on COMSAT's space segment rates, direct access promises only modest prospects for cost savings or increased efficiency.³⁹ Today, any carrier-customer who believes that COMSAT's rates are too high will find many alternative

³⁹ The Administration has stated that "[d]irect access to INTELSAT, properly implemented, probably would yield only modest benefits to U.S. users through greater competition and efficiency." *Statement of Ambassador Vonya B. McCann Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and*

(Continued...)

providers standing ready to compete against COMSAT for that customer's business.⁴⁰

Moreover, if prior FCC findings are to be credited, INTELSAT's direct entry into the U.S. market will create competitive distortions that will harm users as well as competitors. *See DISCO II Order*, 12 FCC Rcd at 24148. Under these circumstances, it is clear that any harm to COMSAT's customers caused by a brief extension of the *status quo* would be both speculative and outweighed by the severe harm to COMSAT (and to competition) that direct access would entail.⁴¹

B. A Stay Will Not Harm the FCC.

A stay would not harm the Commission. The agency *would*, however, be needlessly but heavily burdened were it required, upon reversal, to construct a transitional mechanism to unwind the direct access regime that it just finished creating. The Commission has an interest in conserving its administrative resources. *Amor Family Broadcasting v. FCC*, 918 F.2d 960, 963 (D.C. Cir. 1990). Indeed, at different times, the FCC has relied on its interest in

(Continued)

Transportation, at 5 (March 25, 1999).

⁴⁰ *See COMSAT Non-Dominance Order*, 13 FCC Rcd at 14131 (noting that the international switched voice and data market is fully competitive on every major international route); *id.* at 14132 (same, for private line service); *id.* at 14135 (same, for full-time video service on all routes); *id.* at 14140 (same, for transmit and receive occasional-use video service in the occasional-use multiple carrier market.).

⁴¹ *See, e.g., Fund For Animals v. Clark*, 27 F. Supp. 2d 8, 14 (D.D.C. 1998) (staying an agency order that would have allowed reduction of a bison herd on federal lands, where, *inter alia*, “[a]ll of the supposed consequences that the federal defendants urge would occur should the bison hunt *not* go forward are speculative.”) (emphasis added).

resource preservation as a ground for granting waivers of its rules,⁴² modifying its rules,⁴³ or allowing private parties to settle a licensing dispute.⁴⁴ Here, the complexity and novelty of the technical and administrative issues involved ensure that the Commission would need to expend substantial resources to oversee the transition to direct access. Indeed, the *Order* already contemplates a six-step preliminary process in which: (1) a public notice will require users seeking direct access to notify the Commission, which then will determine eligibility for direct access; (2) COMSAT must respond to these notifications; (3) additional carriers may then request direct access; (4) COMSAT must respond to these additional requests; (5) COMSAT must file new tariff schedules (annually), which will be subject to administrative litigation; and (6) COMSAT must establish reporting mechanisms with INTELSAT for identification of

⁴² See, e.g., *MCI Telecommunications Corp.*, FCC 99-110, 1999 FCC LEXIS 2236, ¶ 17 & n.36 (May 19, 1999) (waiving an applicable rule because, *inter alia*, “waiving [the rule] and affirming the Bureau's decision will conserve administrative resources” that would need to be expended if the rule were not waived and the Bureau’s decision were therefore overturned) (citing *Valley Telecasting Co., Inc. v. FCC*, 336 F.2d 914, 917 (D.C. Cir. 1964)).

⁴³ See, e.g., *1998 Biennial Regulatory Review*, 13 FCC Rcd 23056, 23074 (1998) (Report & Order) (modifying FCC rules in order to allow broadcast stations to self-assess certain documents formerly reviewed by the Commission, “in lieu of the Commission expending staff resources to analyze sales agreements and contracts in every case. . . .”); *Implementation of Sections 12 & 19 of the Cable Television Consumer Protection & Competition Act of 1992*, 8 FCC Rcd 3359, 3420 (1993) (raising the complainant’s burden of proof in certain cable television programming rate proceedings “[i]n an effort to conserve Commission resources and avoid the need for discovery and protracted adjudication. . . .”), *recon. denied in pertinent part and granted in part in other respects*, 10 FCC Rcd 886 (1994), *further recon. denied*, 10 FCC Rcd 3105 (1994).

⁴⁴ See, e.g. *Western Cities Broadcasting Inc.*, 11 FCC Rcd 19763, 19764 (1996) (allowing parties to settle a complaint alleging that a license transfer would be contrary to the public interest because, *inter alia*, settlement would “serve the public interest by . . . conserving the resources of the parties and the Commission.”); *Los Amigos Media*, 10 FCC Rcd 4973, 4973 (Rev. Bd. 1995) (same).

surcharges. Further Commission intervention doubtless will be needed if and when the preliminary stages are concluded. And because the likelihood of reversal on the merits is great, *see* Section I, *supra*, the FCC is likely, following a reversal, to be pressed to expend similar resources to construct a mechanism to restore the *status quo ante*. These expenditures of agency resources are unnecessary; the agency's interest in preserving its resources would best be served by a stay.

Further, the Commission has an interest in avoiding administrative chaos. Where an order that remains subject to reversal purports to dramatically revise the *status quo*, the orderly administration of justice is best served by a brief stay of the order pending appeal. *Ruiz v. Estelle*, 650 F.2d 555, 573 (5th Cir. 1981) (staying pending appeal a district court order that sought to implement sweeping and drastic changes to the Texas prison system). In such a case, a stay avoids both the chaos and the unnecessary expenditure of administrative resources that would ensue if sweeping, wide-ranging changes to the well-established *status quo* ultimately had to be undone. *Id.* In *Ruiz*, the appellate court found that it would serve no purpose—and indeed could cause chaos—for the Texas Department of Corrections to undergo the “administrative nightmare” of complying with the lower court’s “quotas and deadlines,” instead of simply “maintain[ing] the *status quo*” pending appeal. *See id.* at 573. Here, as in *Ruiz*, it will be an “administrative nightmare” for the agency when the *Order* is ultimately reversed.

C. A Stay Will Not Harm End Users of International Communications Services Provided via INTELSAT Space Segment.

There is no evidence that affording direct access to the INTELSAT system would have any affect on the retail prices paid by end users of international communications services.

Rather, the record before the agency shows that implementing direct access would simply benefit, at COMSAT's great expense, telecommunications corporations far larger than COMSAT. Because the *public* would not benefit from implementation of direct access—as COMSAT's uncontroverted evidence in the proceeding demonstrated—the public likewise would not be harmed by a stay of the *Order* pending appeal.

As noted above, *none of COMSAT's carrier-customers was willing to pledge to pass through any savings to consumers.* See *supra* n.31, and accompanying text. Further, satellite circuits leased from COMSAT currently represent, on average, less than 1.3% of the total cost of an international telephone call—and more than half of this 1.3% must be paid to INTELSAT, even under a direct access regime. See *supra* n.38. Thus, the potential effect of direct access on end-user rates would be *de minimis* even if any savings were passed through (which will not be the case). Yet rather than addressing these basic facts, the *Order* simply ignores the record evidence proving that COMSAT has consistently lowered its rates as its costs have diminished,⁴⁵ while the U.S. retail international carriers have consistently raised their rates even in the face of diminishing costs.⁴⁶

The potential effect of direct access on international telecommunications service quality would be similarly non-existent. Because the INTELSAT-based space segment would remain

⁴⁵ See, e.g., *Policies and Rules for Alternative Incentive Based Regulation of COMSAT Corp.*, 14 FCC Rcd at 3072 (citing COMSAT's firm commitment "to reduce rates by four-percent annually, while agreeing not to raise rates at any time," even on non-competitive "thin routes").

⁴⁶ See COMSAT Comments, at Part IV.B.4 (demonstrating that basic rates on international routes have been increasing at the same time that long-distance companies' space segment costs of providing service have been dropping); COMSAT Reply Comments, at 55-56 (same).

unchanged (regardless of who can use it to provide service in the United States), direct access offers no mechanism for improving the quality or scope of the INTELSAT-based space segment currently provided by COMSAT.

The resolution of a dispute that does not affect consumer prices or the quality of service simply does not bear on the public interest. *See KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1192 (D.C. Cir. 1983) (public interest not affected by outcome of cable carriage dispute between two healthy NBC affiliates because “the public interest is not affected until economic injury to a [broadcast television] station threatens to result in a loss of television service to the public.”). Here, no carrier contends that the public would lose an existing service unless direct access were immediately implemented. Accordingly, the public interest would not be affected by a stay of the *Order* pending review.

IV. Granting a Stay Would Serve the Public Interest.

A stay pending judicial review would leave in place the regime which Congress has created, which has been the *status quo* for four decades, and which the Senate recently voted unanimously to perpetuate until at least July 1, 2001. In contrast, implementation of the *Order* would threaten competition in the U.S. international satellite services market by permitting the direct entry of INTELSAT—a fully immunized international treaty organization—into that market.

A stay would also serve the public interest because “the public has a general interest in ‘the meticulous compliance with the law by public officials.’” *Fund For Animals v. Clark*, 27 F. Supp. 2d at 15 (quoting *Fund For Animals v. Espy*, 814 F. Supp. 142, 152 (D.D.C. 1993)). Accordingly, the public interest is necessarily harmed by the implementation of an agency

order that is “contrary to the plain language of [the governing statute,] and therefore unenforceable.” *Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d at 1066. This interest on the faithful application of the law would be dispositive even if, *arguendo*, the public in the present case would derive some marginal benefit from the immediate implementation of direct access—which it would not. *Cf. id.* (staying an agency order that would unlawfully have allowed a large drug company to market a new drug sooner than the small company that had invented the drug, because, *inter alia*, “the public’s interest in the faithful application of the laws outweighed its interest in immediate access to [the new drug]”) (quote marks omitted).

CONCLUSION

The Commission should stay the effect of the *Order* pending judicial review. If the Commission does not act on this Request by October 13, 1999, COMSAT intends to seek a stay of the *Order* from the U.S. Court of Appeals. At a minimum, the FCC should clarify that the *Order* does not require COMSAT to undertake any action until the *Order*’s effective date 60 days after the public notice.

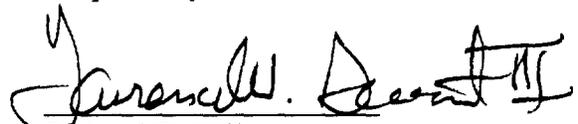
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October 6, 1999

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AFFIDAVIT OF ALLEN E. FLOWER

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)	
)	
Direct Access to the)	IB Docket No. 98-192
INTELSAT System)	File No. 60-SAT-ISP-97
)	

AFFIDAVIT OF ALLEN E. FLOWER

1. I, Allen E. Flower, am Vice President and Chief Financial Officer of COMSAT Corporation (“COMSAT”).
2. I have reviewed the Commission’s Order of September 16, 1999, in the above-referenced proceeding (“*Order*”) and have analyzed the effect of its provisions on the revenue that COMSAT generates through the operations of its COMSAT World Systems (“CWS”) division, which provides INTELSAT capacity on a non-discriminatory basis to U.S. international telecommunications carriers and other users.
3. As COMSAT reported in recent filings with the Securities and Exchange Commission, in the first half of 1999, \$165.2 million of COMSAT’s \$300.4 million in total revenues were attributable to its CWS business segment; in 1998, \$303.1 million of COMSAT’s \$616.5 million in total revenues were attributable to its CWS business segment; and in 1997, \$286.1 million of COMSAT’s \$562.6 million in total revenues were attributable to its CWS business segment.
4. COMSAT’s revenues from the sale of INTELSAT-based services currently constitute 42% of COMSAT’s total revenues and produce 59% of the pre-tax operating income of the company.
5. The largest portion of CWS’s revenues come from its provision of full-time voice-grade half-circuits (two-way communications links between an earth station and an INTELSAT

satellite) to U.S. international communications common carriers, such as AT&T, MCI WorldCom, and Sprint.

6. Once its directives are effective, the *Order* permits COMSAT's customers to bypass COMSAT and obtain capacity directly from INTELSAT at a rate based on an accounting unit known as the "INTELSAT Utilization Charge" ("IUC"), which is the same accounting mechanism by which COMSAT reserves INTELSAT capacity.
7. With respect to those U.S. users who opt for direct access, the *Order* permits COMSAT to recover a "surcharge" estimated at 5.58% of the IUC, which the Commission states is designed to compensate COMSAT only for its "direct costs" in fulfilling its statutorily required "Signatory functions on behalf of the U.S. government and all users of INTELSAT services." *Order*, ¶ 52.
8. The Commission explicitly forbids COMSAT from collecting a surcharge sufficient to cover other expenses such as its corporate tax liabilities and investment and operating liabilities.
9. My analysis of the impact of the *Order* on CWS revenues indicates that COMSAT will, as a result of the Commission's action, sustain a loss of customers and revenue because the *Order* will prompt COMSAT's prospective new customers and existing customers seeking additional capacity or renewal of existing leases to opt to take service from INTELSAT directly unless COMSAT offers that capacity at or below a price that equals the IUC plus the surcharge.
10. Although it is difficult to quantify these future losses precisely, I estimate that the lost revenue from the disruption of business relations, the loss of customers, and impairment of goodwill will amount to millions of dollars during the period between the effective date of the *Order* and the resolution of the anticipated court appeal of that Commission action.

AE Flower

Allen E. Flower

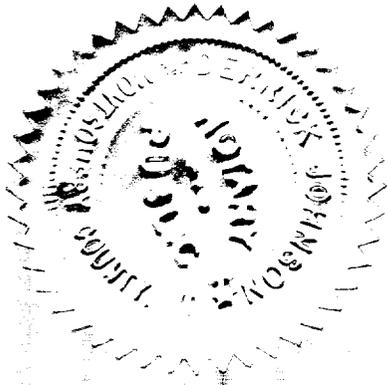
Subscribed and sworn to
this 5th day of October, 1999:

Derrick Johnson

Derrick Johnson

My commission expires:

NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires December 15, 1999



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Request for Stay Pending Judicial Review was served by hand, this sixth day of October, 1999, on the following individuals:

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Washington, D.C. 20554

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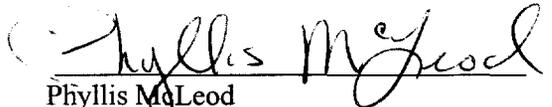
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